

89-227

Supreme Court, U.S.

FILED

AUG 7 1989

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

RON BROWN,

Petitioner,

v.

VIAL, HAMILTON, KOCH & KNOX, et al.,

Respondents.

APPENDIXES

Respectfully submitted,

Ron Brown
3614 Marvin D. Love Frwy
at S. Tyler
Dallas, Texas 75224
(214) 331-4235

PRO SE

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-1482
Summary Calendar

RON BROWN and RON BROWN
and ASSOCIATES,

Plaintiff-Appellants,

versus

VIAL, HAMILTON, KOCH &
KNOX, ET AL.,

Defendants-Appellees.

Appeal from the United States
District Court for the Northern
District of Texas
(CA-3-87-2654-G)

(April 18, 1989)

APP. A-1



Before REAVLEY, JONES and DUHE, Circuit Judges.

REAVLEY, Circuit Judge:*

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Ron Brown and Ron Brown Associates allege that the prohibition of plaintiffs' business as the unauthorized practice of law constitutes violations of federal antitrust law, federal constitutional law, and state law by the defendants. The federal district court granted the defendants' motion for



summary judgment on the federal claims and dismissed the state claims without prejudice; we affirm.

Background

Ron Brown & Associates conducted business as agent/representative for individuals in resolving their personal injury or property damage claims. Brown contracted with clients, on a contingency fee basis, to effect settlement of their claims. The Unauthorized Practice of Law Committee of the State Bar of Texas sued Brown and his company in Texas state court seeking declaratory and injunctive relief. Brown counterclaimed alleging a violation of his constitutional rights. The trial court found Brown to have engaged in the unauthorized practice of law and permanently enjoined him. The court also denied relief to Brown on his



counterclaims; the judgment was affirmed.

Brown v. Unauthorized Practice of Law

Committee, 742 S.W. 2d 34 (Tex. App. --
Dallas 1987, writ denied).

Simultaneously, Brown brought an action in state court against insurance companies and individual insurance adjusters alleging libel and violations of his constitutional rights. Summary judgment was granted on all claims in favor of defendants.

After resolution of the state actions, Brown brought this action in federal court against law firms and individual lawyers, insurance companies and individual employees of those companies, and the State Unauthorized Practice of Law District Sub-committee, State Bar of Texas and the committee chairman. Brown alleged that the



defendants violated the antitrust laws by placing unlawful restraints on Brown's business. Brown also claimed that the defendants violated his constitutional rights under the First, Fifth, and Fourteenth Amendments. Finally, Brown alleged state claims of libel, slander, and tortious interference of contract.

The federal district court granted the defendants' motion for summary judgment on the federal claims. The court held that Brown lacked standing to bring the antitrust claim and that no existing constitutional right was shown to have been violated. In its discretion, the district court declined to exercise jurisdiction over the remaining pendent state claims and these claims were dismissed without prejudice.

Discussion

Summary judgment is appropriate if it is shown that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). When the only issues to be decided are issues of law summary judgment is appropriate. The district court held that, on both the federal antitrust and constitutional claims, Brown's claims were deficient as a matter of law.

In his complaint, Brown alleged that the defendants violated the antitrust laws, in particular sections 1 and 2 of the Sherman Act. 15 U.S.C. sections 1, 2 (Supp. 1989). These provisions prohibit the monopolization of trade and trusts or agreements in the restraint of trade.



To have standing to assert a private antitrust claim Brown must claim that his "legally cognizable business or property" has been injured by the alleged antitrust violation. Turner v. American Bar Ass'n, 407 F.Supp. 451, 479 (N.D. Tex. 1975), aff'd sub nom. Pilla v. American Bar Ass'n, 542 F.2d 56 (8th Cir. 1976) and Taylor v. Montgomery, 539 F. 2d 715 (7th Cir. 1976) (multi-district litigation).

A state court decision has already held Brown in violation of Texas law prohibiting the unauthorized practice of law. Brown's business is not legally cognizable, and therefore, is not within the protective scope of the antitrust laws. See id. at 479-80. In addition, Brown's antitrust claims, and his contention that the state proceedings



were a "sham", strike directly at the state's actions and policies with regard to professional behavior. The restraints placed on the legal profession are compelled by the directions of the State acting as a sovereign. Bates v. State Bar of Arizona, 433 U.S. 350, 359-60 & n.11, 97 S.Ct. 2691, 2696-97 & n.11, 53 L.Ed.2d 810 (1977). Such state regulatory activities do not violate the antitrust laws. See Bates, 433 U.S. at 359-361, 97 S.Ct. at 2696-98 (citing Parker v. Brown, 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1943)); Hefner v. Alexander, 779 F.2d 277, 280 (5th Cir. 1985). For these reasons, the district court did not err in granting the defendants' summary judgment motion.

Brown fails to allege the violation of a constitutional right under which he

is entitled protection. Brown has been prohibited from representing clients with disputed liability claims in a manner that constitutes the practice of law.

"There is no constitutional guarantee that non-attorneys may represent other people in litigation." Guajardo v. Luna, 432 F.2d 1324, 1325 (5th Cir. 1970); see also Turner; 407 F.Supp. at 480. In addition, Brown has made no showing that he has been denied equal protection of the laws. Others, defendant insurance adjusters for instance, operate under laws allowing non-lawyers to investigate claims on behalf of any person handling those claims. Tex. Ins. Code Ann. art. 21-07-4 (Vernon 1981 & Supp. 1989).

Brown has not shown, however, how the prohibition of his business, which goes beyond the lawful activities of insurance

adjusters, violates his constitutional rights in any manner.

Finally, Brown challenges the district court's discretionary decision to decline to exercise jurisdiction over the remaining pendent state claims. The district court is not required to exercise jurisdiction under these circumstances. See Kaplan v. Clear Lake City Water Authority, 794 F.2d 1059, 1066 (5th Cir. 1986), citing United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966). The district court correctly declined to exercise jurisdiction and thus avoided needless determination of state law.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-1482

RON BROWN and RON
BROWN and ASSOCIATES,

Plaintiffs-Appellants,

versus

VIAL, HAMILTON, KOCH
& KNOX, ET AL.,

Defendants-Appellees.

Appeal from the United States
District Court for the Northern
District of Texas

ON PETITION FOR REHEARING

(May 12, 1989)

APP. A-11



Before REAVLEY, JONES and DUHE, Circuit
Judges.

PER CURIAM:

IT IS ORDERED that the petition for
rehearing filed in the above entitled and
numbered cause be and the same is hereby
denied.

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF
THE MANDATE.

ENTERED FOR THE COURT:

U.S. Circuit Judge
REAVLEY



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RON BROWN and RON)	
BROWN & ASSOCIATES,)	
)	
Plaintiffs,)	
	)	CIVIL ACTION NO.
VS.)	
	)	CA 3-87-2654-G
VIAL, HAMILTON, KOCH)	
& KNOX, ET AL.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This case is before the court on the following motions: the first amended motion of defendant Jim Bloom for dismissal or, alternatively, for summary judgment and for Rule 11 sanctions; the motion of the State Unauthorized Practice of Law District Subcommittee, State Bar

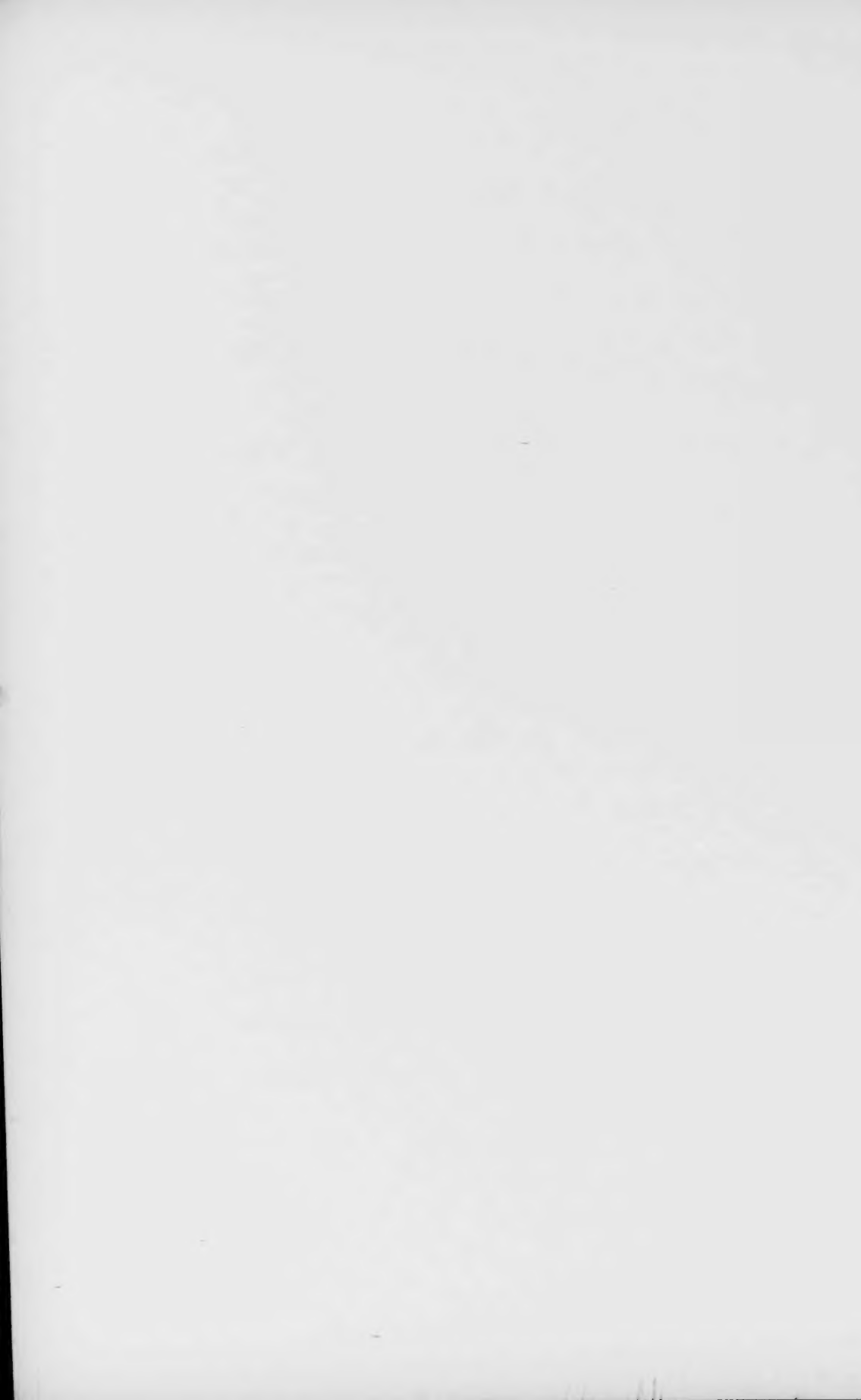


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of Texas ("SUPLC"), for dismissal or, alternatively, for summary judgment and for Rule 11 sanctions; and the motion of defendants Vial, Hamilton, Koch & Knox, et al. to dismiss. After reviewing the motions and supporting briefs, the plaintiffs' replies, and the applicable cases and statutes, the court concludes that the motions to dismiss should be granted but that the motions for sanctions should be denied.

I. Background

Ron Brown ("Brown") filed this pro se action alleging that the various defendants are engaged in a combination and conspiracy in restraint of trade; that the defendants' actions constitute a monopoly and an attempt to monopolize in



restraint of trade; that the defendants have violated Brown's first, fifth and fourteenth amendment rights; that the defendants have libelled and slandered Brown; and that the defendants have tortiously interfered with Brown's contract rights.

The record establishes that defendant SUPLC sued Brown in the 160th Judicial District Court of Dallas County, Texas, in case no. 86-8566-H, to enjoin him from engaging in the unauthorized practice of law. Brown filed a counterclaim in that suit seeking declaratory and injunctive relief on the basis that the action to enjoin him from practicing law was, inter alia, an infringement of his constitutional rights. On November 26, 1986, the 160th



Judicial District Court permanently enjoined Brown from engaging in the unauthorized practice of law. This injunction was affirmed on appeal. *Brown v. Unauthorized Practice of Law Committee*, 742 S.W.2d 34 (Tex. App. -- Dallas 1987, writ denied).

In another state court action, *Brown v. Ohio Casualty Insurance Co., et al.*, No. 86-8882-I, in the 162nd Judicial District Court of Dallas County, Texas, Brown sued a number of insurance companies and adjusters claiming that they had libelled him and violated his constitutional rights. On January 8, 1987, summary judgment was entered in favor of all defendants. The Court of Appeals for the Fifth District affirmed this decision in an unpublished opinion on March 18, 1988.

II. Analysis

A. Antitrust Claims

Brown asserts in counts one and two of his complaint that the defendants entered into a combination and conspiracy to monopolize and to exclude him from conducting his business. Because the court concludes that Brown lacks standing to assert these antitrust claims, counts one and two must be dismissed.

The gist of Brown's argument in counts one and two is that the defendants have violated the antitrust laws by preventing him from engaging in those activities that have previously been adjudged illegal by the state court. To have standing to assert a private antitrust claim, "the [P]laintiff must

sufficiently allege and demonstrate that his legally cognizable business or property has been injured as a proximate result of the alleged violation of the antitrust laws" (emphasis in original). Turner v. American Bar Association, 407 F.Supp. 451, 479 (N.D. Tex. 1975), aff'd sub nom. Pilla v. American Bar Association, 542 F.2d 56 (8th Cir. 1976); see also Martin v. Phillips Petroleum Company, 365 F.2d 629, 632-34 (5th Cir.), cert. denied, 385 U.S. 991 (1966).

Because Brown's alleged injury stems from activities previously determined to be illegal, the plaintiff has not shown a cognizable injury.

In Broker's Title, Inc. v. Main, CCH 1986-2 Trade Cases sec. 67,394 (4th Cir. 1986), a factually similar case,

plaintiff was adjudged by a state court to have engaged in the unauthorized practice of law. It then filed an antitrust suit in federal court. The court granted summary judgment for the defendants, ruling that the plaintiff lacked standing to allege an antitrust injury because his activities were illegal.

In the present case, the 160th Judicial District Court held that Brown's business activities are illegal. Brown therefore lacks standing to argue that his illegal business has been injured by the defendants' actions, so that counts one and two of the complaint must be dismissed.

B. Constitutional Claims

In count three of his complaint, Brown asserts in conclusory fashion that "Defendants [sic] measures, actions and practices implemented against Plaintiff by Defendants as described herein violate Plaintiff's rights under the First (1st), Fifth (5th) and Fourteenth (14th) Amendments of the United States Constitution, i.e., freedom of speech or press; life, liberty or property without due process; equal protection of the laws." While it is unclear exactly how Brown contends the defendants violated his constitutional rights, the court understands his claim to be that the defendants denied his constitutional



rights by enforcing a state statute that prohibits the unauthorized practice of law. Nevertheless, Brown has failed to state a claim for a constitutional violation because there are no rights or guarantees under the first, fifth or fourteenth amendments for a nonlawyer to practice law. *Guajardo v. Luna*, 432 F.2d 1324, 1325 (5th Cir. 1970); *Novak v. Beto*, 320 F.Supp. 1206, 1210 (S.D. Tex. 1970), aff'd in part, rev'd in part, 453 F.2d 661 (5th Cir. 1971), cert. denied, 409 U.S. 968 (1972); Turner v. American Bar Association, above, 407 F.Supp. at 478. Moreover, state laws prohibiting the unauthorized practice of law do not violate the first, fifth or fourteenth amendments. Guajardo, above, 432 F.2d at 1325; *Lindstrom v. State of Illinois*, 632



F.Supp. 1535, 1538 (N.D. Ill. 1986),
appeal dismissed, 828 F.2d 21 (7th Cir.
1987).

C. Libel, Slander, and Tortious
Interference With Contract Claims

The complaint alleges that subject matter jurisdiction of these claims is proper here because federal questions involving antitrust and constitutional law claims have been asserted. For the reasons stated above, however, Brown's constitutional and antitrust claims must be dismissed. Because federal question jurisdiction is now absent, the court must determine whether diversity jurisdiction exists under 28 U.S.C. sec. 1332. A review of the complaint



evidences that there is no diversity of citizenship between Brown and defendants. Thus, the court must exercise its discretion in deciding whether to maintain the pendent state court claims. See, e.g., In re Carter, 618 F.2d 1093, 1104-05 (5th Cir. 1980), cert. denied, 450 U.S. 949 (1981). The court exercises this discretion by concluding that the state tort claims should also be dismissed. 1 See United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966)("if the federal claims are dismissed before trial, ... the state claims should be dismissed as well").



1 Brown has already litigated at least some of these claims in state court. Thus, it is readily apparent that principles of res judicata and/or collateral estoppel may bar relief on these claims.

D. Claim for Injunctive Relief

In count six of the complaint, Brown seeks to enjoin defendants from future acts in violative of the antitrust laws. Because Brown lacks standing to assert the antitrust claims alleged in counts 1 and 2, his claim for injunctive relief in count 6 must also fail.



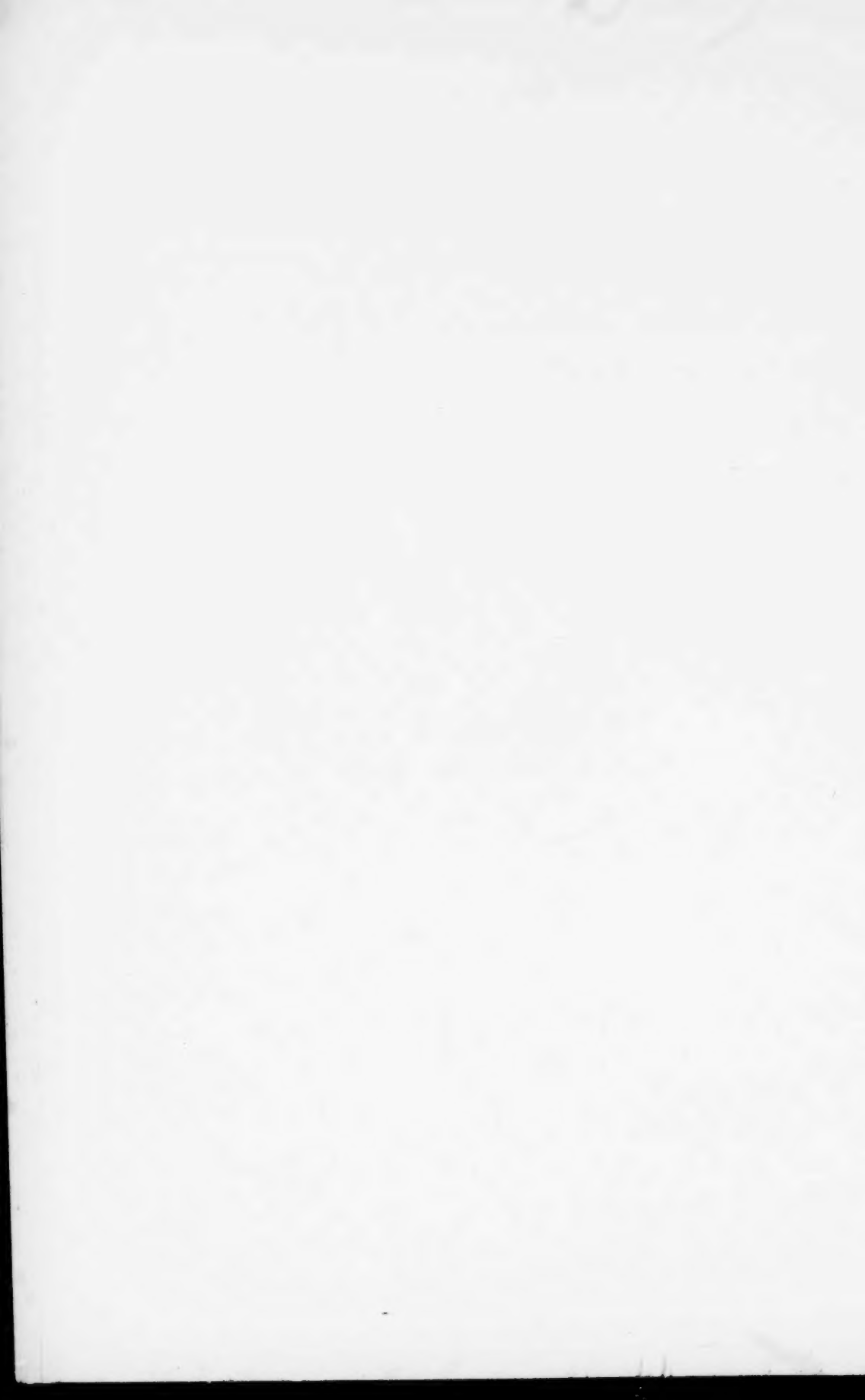
III. Conclusion

For the reasons stated above, Brown's claims against all defendants are DISMISSED (the state law claims for libel, slander, and tortious interference with contract are DISMISSED without prejudice). Defendants' motions for sanctions are DENIED.

SO ORDERED.

May 12, 1988.

A. JOE FISH
U.S. District Judge



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RON BROWN and RON)	
BROWN & ASSOCIATES,)	
)	
Plaintiffs,)	
	)	CIVIL ACTION NO.
VS.)	
	)	CA 3-87-2654-G
VIAL, HAMILTON, KOCH)	
& KNOX, ET AL.,)	
)	
Defendants.)	

ENTERED ON DOCKET
5-13-88 PURSUANT
TO F.R.C.P. RULES
58 AND 79a.

JUDGMENT

For the reasons stated in the

memorandum order of this date, it is
ORDERED that plaintiffs take nothing
against defendants and that defendants
recover their costs of court.

May 12, 1988.

A. JOE FISH
U.S. District Judge

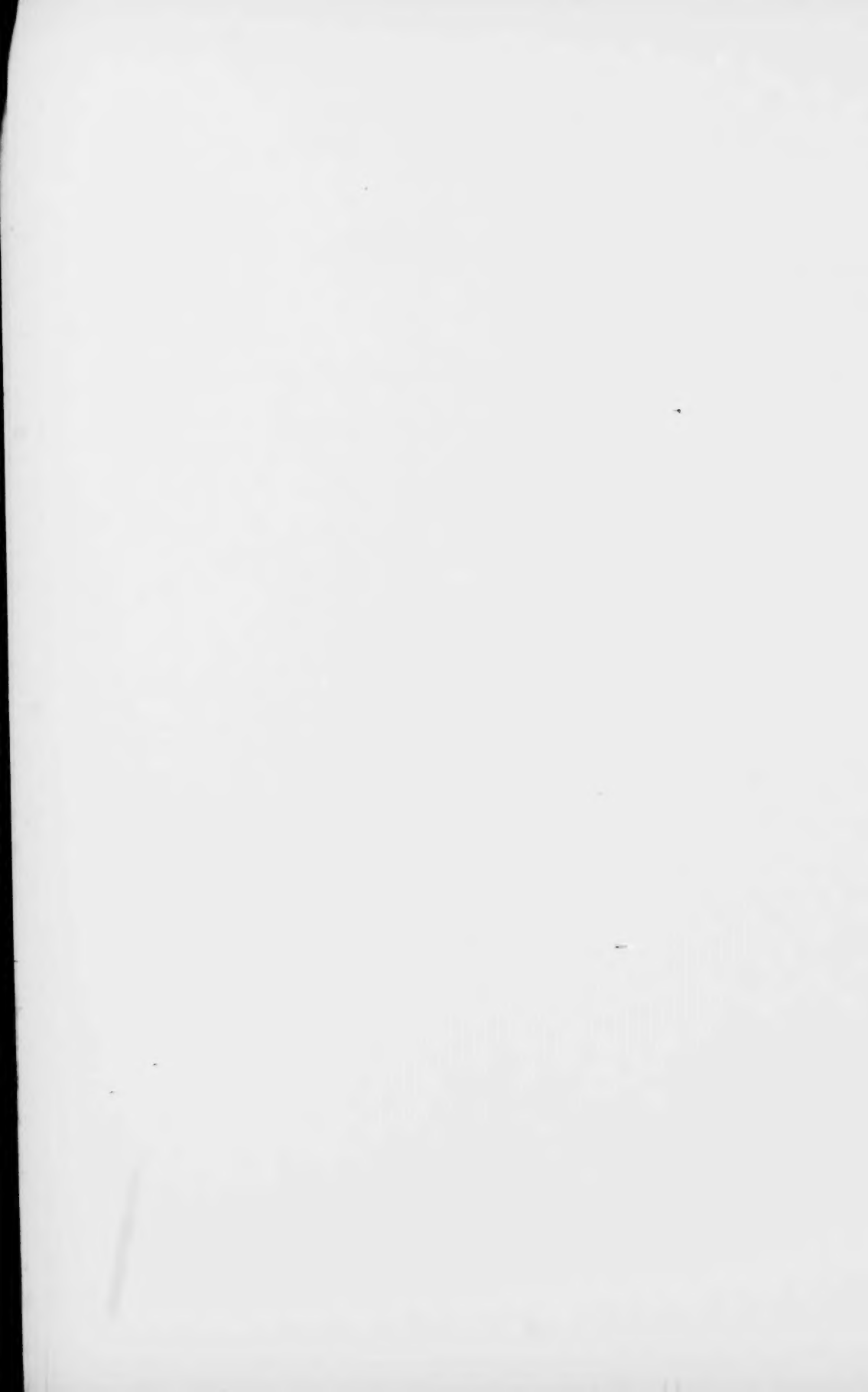


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RON BROWN and RON)	
BROWN & ASSOCIATES,)	
)	
Plaintiffs,)	
	)	CIVIL ACTION NO.
VS.)	
	)	CA 3-87-2654-G
VIAL, HAMILTON, KOCH)	
& KNOX, ET AL.,)	
)	
Defendants.)	

AMENDMENT TO MEMORANDUM ORDER

The court's memorandum order of May 12, 1988, is hereby amended to include the motion to dismiss and for Rule 11



sanctions of defendant members Insurance Group, Ruth Hunter, and Leonard Adkins. Consistent with the May 12, 1988 order, the motion to dismiss is GRANTED and the motion for sanctions is DENIED.

SO ORDERED.

May 16, 1988.

A. JOE FISH
U.S. District Judge



COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

NO. 05-87-00223-CV

RON BROWN & RON
BROWN ASSOCIATES,

FROM A DISTRICT
COURT

APPELLANTS,

V.

OF

UNAUTHORIZED PRACTICE
OF LAW COMMITTEE,
STATE BAR OF TEXAS,

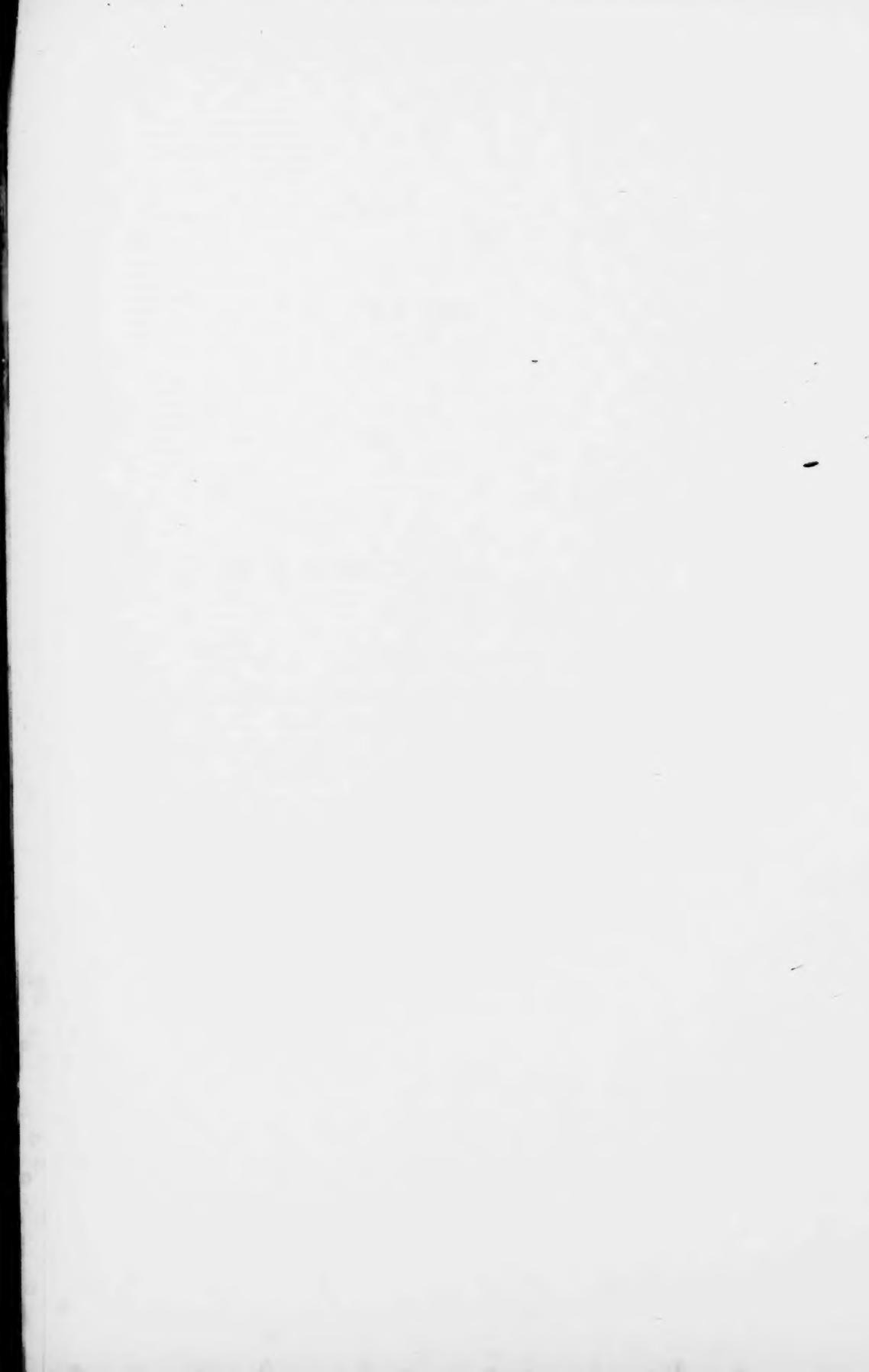
APPELLEES.

DALLAS COUNTY,
TEXAS

BEFORE JUSTICES DEVANY, STEWART AND ROWE
OPINION BY JUSTICE STEWART
SEPTEMBER 22, 1987

The Unauthorized Practice of Law
Committee of the State Bar of Texas

APP. C-1



(the Committee) sued Ron Brown and Ron Brown and Associates (referred to collectively in the singular as "Brown"); the Committee sought a declaration that certain acts and practices engaged in by Brown constituted the practice of law; the Committee also sought injunctive relief. Tried before the court, the judgment: (1) listed six activities in which the court found Brown to have engaged, (2) declared that these six activities constitute the practice of law, and (3) granted the Committee permanent injunctive relief. Brown brings eight points of error. We affirm.

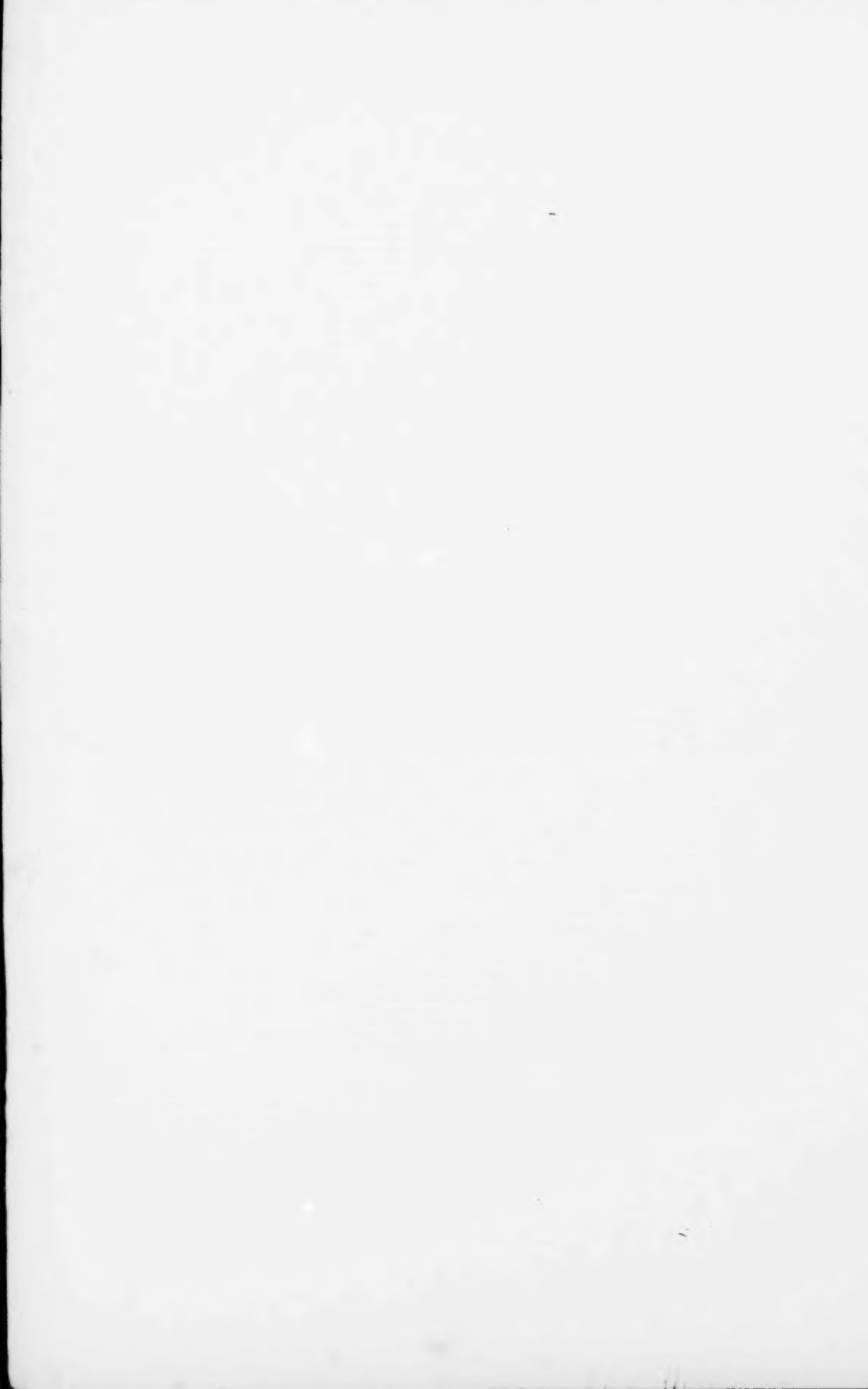
FACTS

Perry C. Post III testified that he was the chairman of the Dallas Subcommittee of the Unauthorized Practice



of Law Committee of the State Bar of Texas. He stated that the subcommittee received four or five complaints with regard to Brown and that the subcommittee authorized Claudia Slate to investigate the allegations against Brown. At a hearing, Brown told the subcommittee that he started his agent business in July or September of 1985 and that he was representing twelve to fifteen persons at that time. The subcommittee recommended to the full committee to file suit against Brown to enjoin his activities. The state committee authorized the suit.

At trial, Brown admitted that he was not an attorney; however, he stated that he did have legal training. He explained that he went to the Brownwood Institute for paralegal study for one year. He



also stated that he worked for various attorneys on a free-lance basis. Brown testified that he had been in this business for about one year.

The record reflects the following undisputed facts. Ron Brown conducted a business in which he entered contracts with individuals to represent them in resolving their personal injury and/or property damage claims on a contingent fee basis. Prior to April 1986, Brown used a form contract that provided that Brown, as agent, was authorized to effect a settlement or compromise of the client's claim, subject to client approval, or to assist the client in retaining legal counsel. The contract further provided that if legal counsel was not obtained, Brown would get one-third of the amount paid to settle



his client's claim, but he would receive forty percent of any amount received after obtaining counsel to file suit and he would pay the attorney's fee from his portion. Brown also reserved the right to select legal counsel.

In April 1986, after the investigational hearing on March 25, 1986, Brown modified the contract form he was using to reflect that Brown, as agent, "was authorized to present factual data and general background information regarding the incident [from which the client's claim arose] and to effect a tentative settlement or compromise, subject to CLIENT approval." The modified contract retained the provision that neither the agent nor the client could finalize a settlement without the other's approval but added, "and only



after CLIENT has conferred with an attorney to advise such CLIENT of the nature and binding effect CLIENT(S) [sic] acceptance of said tentative agreement has within the judicial system." It further provided that the agent has specifically held out to the client that he is not an attorney and "is not to in any way engage in the practice of law in the performance of said duties." This form deleted the provision for Brown to select legal counsel and for an increased percentage of the recovery if an attorney was obtained; instead, this form provided for a twenty percent contingent fee of any amount received by compromise or settlement and, if any attorney became necessary, agent (Brown) would receive \$45.00 per hour for a maximum of forty hours.



In identical affidavits of three of his clients, **which** are attached to Brown's pleadings, 1 the clients state:

I hired Ron Brown, of RON BROWN & ASSOCIATES, to act as my agent/representative in assisting me in presenting, processing and resolving all claim(s) arising out of said accident.

Mr. Brown informed me that the type of services he would provide in my behalf would be as follows:

- a) assist me with completing blank claim form(s) provided by insurance companies;
- b) make telephone and/or personal appearances along with or in my behalf in said claim(s) as my spokesperson;



c) assist me in obtaining
medical reports and bills
from my physician(s);

1 The parties stipulated that the
trial court could take judicial notice of
"all papers on file in this cause," and
the judgment so reflects.

d) assist me in
ascertaining my losses;

e) submit letter(s) to
insurance companies notifying
them of (1) general
background information
relative to what, when, where
and how the accident/incident
occurred as I related same to
him, (2) names and addresses
of my treating physician(s),
(3) names and addresses of my
employer(s), and, if need be,



(4) he would submit all proposed offers of settlement at my request.

Mr. Brown never represented himself to me as an attorney; never advised me of any legal rights, privileges or duties under the law; nor did he advise me whether to pursue any claim(s). Mr. Brown always told me that I could seek the services of an attorney of my own choosing or that he would recommend an attorney, if requested by me, at any time.

Further, Mr. Brown informed me that his services would cease one (1) year from the date of my accident, and, if my claim(s) were not resolved within that period, he would urge that I seek the services of an attorney.



Mr. Brown never advised me to accept or reject any offered sums of money in settlement of my claim(s), he merely presented all offers that were advanced and left that decision completely with me whether to accept or reject same.

The record also reflects the testimony of two insurance adjusters with whom Brown dealt on behalf of clients. Ruth Hunter, a claims representative for Members Mutual Insurance Company, testified that she received maybe half a dozen letters of representation from Brown, saying he was representing someone with respect to an automobile accident.

- The persons represented by Brown were either the insured under a Members policy or were involved in an accident with an insured of Members and making a claim against Members' insured. Hunter stated that normally Brown would send a specialist packet for his client, that her job was to evaluate the claim and get back to Brown regarding settlement of the claim; that there were occasions when she had made an offer, he made a counteroffer and there was dialogue back and forth to reach an agreeable number; that this discussion could be called negotiation of the claims; that she actually settled claims with individuals Brown was representing; that "Ron Brown, Attorney at Law," was a co-payee on the insurance



draft on every occasion in which a settlement was reached; that she believed Brown was an Attorney "because he conducted himself the way other attorneys did. He sent the letter of representation. He sent his expenses. He called me periodically." Hunter also testified that Brown had never told her he was an attorney; that she assumed it; that she did not know whether Brown endorsed the insurance drafts as "agent/representative" instead of as "attorney at law;" and that in her ten years as an adjuster, Brown was the first agent who had ever presented her a claim to handle, all other accident claims having been from attorneys.



Van Simms, a liability claims supervisor with Fireman's Insurance Company, testified that when he was a claims representative he recieved a letter of representation from Brown concerning an automobile accident involving Joanne Bryant, one of Fireman's insureds. Brown was representing Eunice King and Norma King regarding a personal injury to Eunice's neck and shoulders and regarding property damage. In response to Brown's letter, Simms called Brown and told him that the company had already accepted liability on the case and that "we had accepted the claim." Later Brown wrote Simms a second letter indicating that his client was still receiving the care of a physician and that "I would be

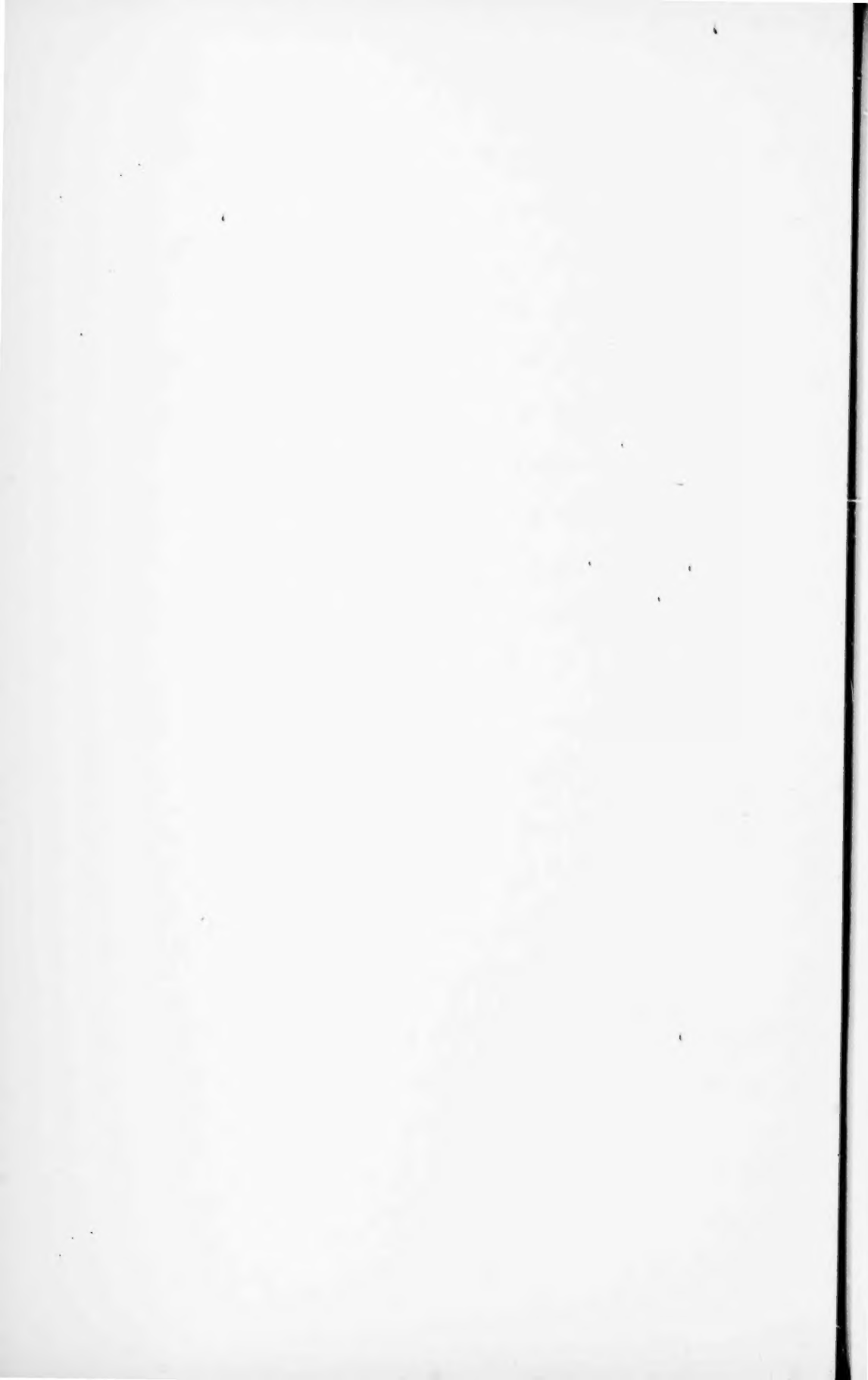
amendable [sic] to a resolution of this matter on an estimated basis." Simms testified that he interpreted the letter to mean that Brown possibly would settle the case at that time. He stated, however, that the company would not settle a case until all medical bills were received and reviewed. He further stated that when he received the second letter, he noted that Brown was not an attorney; that he failed to pick that up on Brown's first letter because it came in just like any other letter from an attorney's office, the letterhead looked like any other attorney's letterhead, and he failed to notice it did not say attorney on it. Simms then contacted his claims manager about how to proceed and subsequently wrote Brown that he could

not negotiate the claim with Brown because he was not an attorney. Simms also acknowledged that Brown never represented himself to Simms as an attorney; that he presumed Brown was an attorney; that the facts of the accident, what happened, and basic background information about the incident that Brown presented in his first letter were essentially the same as the information provided by the company's insured; and that the issue of liability was never in dispute between them. Simms further testified that he and Brown never negotiated regarding settlement of the claim and no offers were made by either of them.

Simms also testified that an adjuster is licensed by the state; that

to get a license one must take a training course and pass a test; and that the license allows an adjuster to adjust claims and make settlements concerning monetary value on behalf of his employer; that if a legal question arises he can consult both house counsel and outside counsel employed by the company; and that no legal question arose in his dealings with Brown requiring assistance of an attorney.

Only one of Brown's clients, Gloria Nicely, testified at trial. Her testimony reveals that she was a passenger in a car involved in an accident; that she was injured in the accident; that the driver, Brown's brother-in-law, told her Brown was an attorney and recommended Brown to her;



she went to his office "looking to hire an attorney" and thought she hired one because Brown did not tell her he was not an attorney. She told Brown what had happened and he said he could handle the claim and would contact the insurance agent and the lady in the other car involved in the accident; that she filled out a contract with Brown in which he was to get one-third of what she got.

ARGUMENTS

In Brown's eighth point of error, he contends that the trial court erred as a matter of law in denying his request for findings of fact and conclusions of law. Because the trial court incorporated its findings of fact and conclusions of law within the judgment, this point of error is moot. In a nonjury trial, the



findings and conclusions are normally placed in a separate instrument filed after a formal request by a party; however, when the trial court incorporates findings and conclusions into the judgment -- even when no party requested them -- they shall be treated as findings and conclusions filed in accordance with rule 296 of the Texas Rules of Civil Procedure. Humble Exploration Co. v. Fairway Land Co., 641 S.W.2d 934 (Tex. App. -- Dallas 1982, writ ref'd n.r.e.).

In Brown's first six points of error, he attacks (1) the trial court's declaration that the six listed activities constitute the practice of law, (2) the trial court's finding that he engaged in three of those activities, and (3) the trial court's granting a



permanent injunction against him. The trial court found that Brown engaged in the following activities:

(a) contracting with persons to represent them with regard to their personal causes of action for property damages and/or personal injury;

(b) advising persons as to their rights and the advisability of making claims for personal injuries and/or property damages;

(c) advising persons as to whether to accept an offered sum of money in settlement of claims for personal injuries and/or property damages;

(d) entering into contracts with individuals to represent them in their personal injury and/or property damage matters on a contingent fee together with an attempted assignment of a portion of the person's cause of action to the defendant;



(e) entering into contracts with third persons which purport to grant to the defendant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding; and

(f) advising "clients" of their rights, duties, and privileges under the laws.

Brown does not attack the trial court's findings that he engaged in the activities described in (a), (d), and (e) above, all of which describe the nature of the contracts he entered into with individuals regarding their claims for personal injury and/or property damage arising from automobile accidents.



However, in his second, third, and fourth points, Brown contends that the trial court erred in finding that he engaged in the activities described in (b), (c), and (f) above because there is no evidence or insufficient evidence to support those findings.

When determining a no-evidence point of error, appellate courts must consider only the evidence and inferences that support the fact findings and disregard all evidence and inferences to the contrary. McKnight v. Hill Exterminators, Inc., 689 S.W.2d 206 (Tex. 1985). When addressing insufficient evidence points, appellate courts consider all of the evidence in order to determine whether the evidence supporting the finding is so weak, or the evidence



to the contrary so overwhelming, that the finding should be set aside and a new trial ordered. Anderson v. Havins, 595 S.W.2d 147, 156 (Tex. Civ. App. -- Amarillo 1980, writ dismissed w.o.j.).

Brown correctly argues that the record nowhere reveals any evidence of one of his clients directly testifying, "Ron Brown advised me of my rights and of the advisability of making a claim," or "Ron Brown advised me as to whether to accept an offered sum of money in settlement of my claim," or "Ron Brown advised me of my rights, duties, and privileges under the laws." Because there is no direct testimony on those three fact findings, Brown maintains that there is no evidence to support them. For the reasons given below, we disagree with Brown's contention.



A person may confer legal advice not only by word of mouth but also by a course of conduct that encourages litigation and the prosecution of claims. Quarles v. State Bar of Texas, 316 S.W.2d 797, 800, 802, & 804 (Tex. Civ. App. -- Houston 1958), pet. denied for writ of cert. to Supreme Court of Texas, 368 U.S. 986 (1962). We agree with Brown that there is no evidence that he ever verbally told his clients their rights. This may be due to the fact that Brown, not being an attorney, did not know himself what his client's legal rights were. Brown's course of conduct nevertheless encouraged litigation and the prosecution of claims and, at least implicitly, advised his clients of what he perceived to be their legal rights. Determining the legal liability, the



extent of legally compensable damages, and the legal rights and privileges of personal injury and property damage claimants, by their very nature, require legal skill and knowledge. We now illustrate how Brown's course of conduct provides both legally and factually sufficient evidence to support the trial court's findings of fact.

We first address whether Brown advised persons as to their rights and the advisability of making claims for personal injuries and/or property damages (finding (b)). Brown contends that he merely handled undisputed and uncontested claims and that he never advised clients of their rights or the advisability of making claims because, "When they come to me, they already feel they have a case. When they come to me, they're usually



already involved in an accident, and they know whose [sic] at fault."

Plaintiff's exhibits one, two, five, and ten illustrate that Brown represented Gloria Nicely, Eunice and Norma King, Ellen White, and Zenobia Sanders, respectively. These persons apparently "felt" they had a claim, and the fact that Brown undertook to represent them regarding their claims illustrates that he impliedly advised them that they did indeed have legal rights and that they certainly should make a claim.

Brown emphasizes that he handles only undisputed and uncontested claims. On the issue of liability, this may be so. However, the evidence abundantly shows that Brown negotiated settlements on damages. Ruth Hunter, a claims representative for Members Insurance,



- testified that she negotiated with Brown on perhaps six different claims. Van Simms, a claims supervisor with Fireman's Insurance, testified that Brown wanted to settle Eunice King's damages on an estimated basis, which meant calculating future medical expenses. It is self-evident that if damages are undisputed and uncontested, then negotiation would not be necessary; because the evidence shows that Brown negotiated, at least on damage issues, we cannot agree that Brown handled only undisputed and uncontested cases.

Brown denied negotiating; he contends that he merely processed claims and that his clients determined their own damages and that he merely inserted their figure and thereafter acted as a go-between. However, Brown admitted on



the stand that he instituted a suit against three insurance companies precisely because they refused to negotiate with him. Furthermore, Brown's sworn petition in that case states that he acts "as their agent in ascertaining damages"

Finally, Gloria Nicely testified that when she contracted with Brown, she thought that she had hired an attorney. If Brown did in fact merely act as a go-between, and if he merely asked for the damages his clients asked for, then Brown again was impliedly advising his clients that the damages for which they asked were in fact the only damages to which they were entitled. From the above evidence, we hold that the evidence is both legally and factually sufficient to support the finding that Brown advised

persons as to their rights and the advisability of making claims for personal injuries and/or property claims.

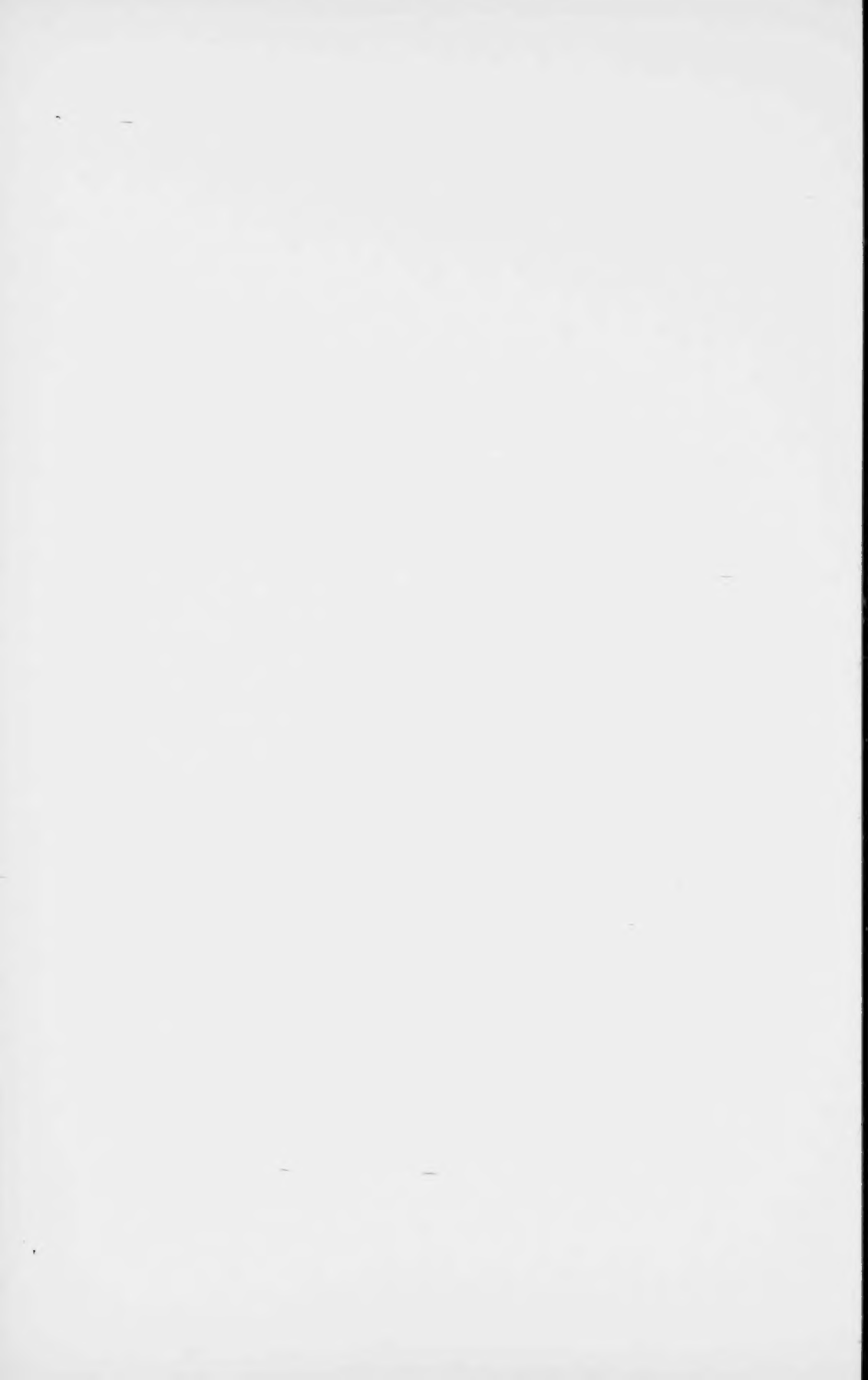
We now address whether Brown advised persons as to whether to accept an offered sum of money in settlement of claims for personal injuries and/or property damages (finding (c)). Brown's contract with White provides that neither he nor she may settle her claim without the other's approval in writing. When Brown approves a settlement he again impliedly advises his client to accept the sum of money offered in settlement. We hold that this evidence is both legally and factually sufficient to support this finding.

The last fact finding we must address is whether Brown advised his clients of their rights, duties, and



privileges under the law (finding (f)). The evidence necessary to support this finding is identical to the evidence necessary to support findings (b) and (c). Because we have held the evidence in support of those findings legally and factually sufficient, we also hold the evidence legally and factually sufficient to support this finding. We overrule points two, three, and four, attacking the trial court's findings that he engaged in the acts under paragraphs (b), (c), and (f).

In Points two, three, and four, Brown also attacks the trial court's conclusions that the activities described in sections (b), (c), and (f) constitute the practice of law. In points one, five, and six, he attacks the trial court's conclusions that the activities



described in (a), (d), and (e) constitute the practice of law. For the reasons given below, we hold that all six sections of the judgment describe activities that constitute the practice of law.

The Legislature has defined the practice of law as follows:

[T]he practice of Law embraces ... the management of the actions ... on behalf of clients before judges in courts as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.



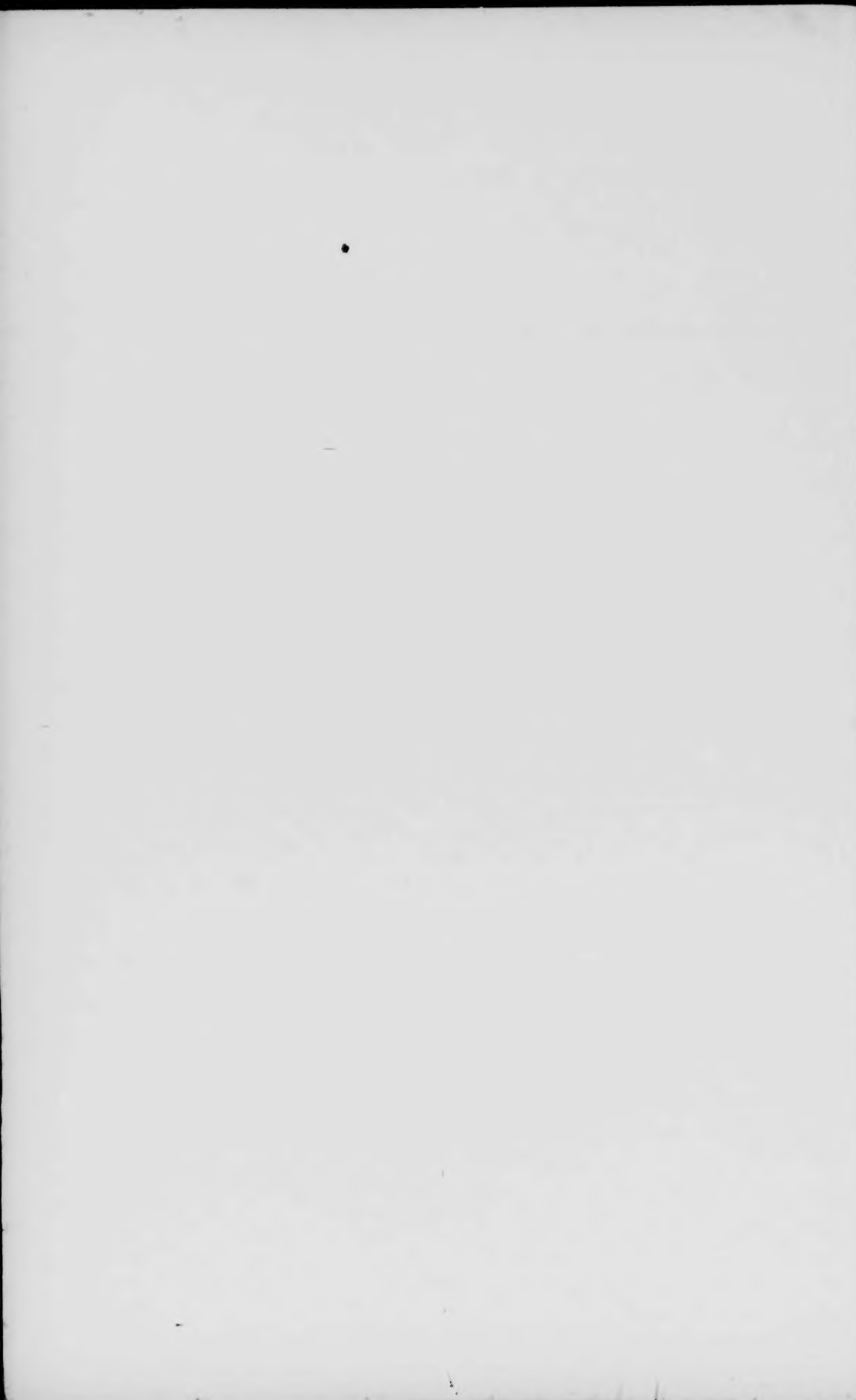
This definition is not exclusive and does not deprive the judicial branch of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

TEX. REV. CIV. STAT. ANN. art. 320A-1, sec. 19(a) (Vernon Supp. 1987). Courts inherently have the power to determine what is the practice of law on a case by case basis, unrestrained by the statutory definition. Unauthorized Practice Committee, State Bar of Texas v. Cortez, 692 S.W.2d 47, 50 (Tex.), cert. denied, 106 S. Ct. 384 (1985).



The practice of law embraces in general all advice to clients and all action taken for them in matters connected with the law. Quarles, 316 S.W.2d at 803. When a person acts for himself or others and undertakes to advise prospective employers or clients by word or course of conduct concerning their legal rights and the prospect of settling personal injury, accident, or other legal claims, thereby encouraging the assertion or prosecution of claims or lawsuits, this person steps beyond the bounds of a legitimate investigation of the facts and engages in the unauthorized practice of law. id. at 800, 802-03.

The controlling purpose of all laws, rules, and decisions forbidding unlicensed persons to practice law is to



protect the public against persons inexperienced and unlearned in legal matters from attempting to perform legal services. Grievance Committee State Bar of Texas, Twenty-First Congressional District v. Coryell, 190 S.W.2d 130, 131 (Tex. Civ. App. -- Austin 1945, writ ref'd w.o.m.). The objective is to protect the public against injury from acts or services, professional in nature, deemed by both the legislature and the courts to be the practice of law, done or performed by those not deemed by law to be qualified to perform them. Grievance Committee of State Bar of Texas, Twenty-First Congressional District v. Dean, 190 S.W.2d 126, 129 (Tex. Civ. App. -- Austin 1945, no writ). The character of the service and its relation to the

public interest determines whether services performed by a layman constitute the practice of law. Id.

Contracting with persons to represent them with regard to their personal causes of action for property damages and/or personal injury constitutes the practice of law.

Quarles, 316 S.W.2d at 801 & 804; cf.

Davies v. Unauthorized Practice Committee

of State Bar of Texas, 431 S.W.2d 590,

594 (Tex. Civ. App. -- Tyler 1968, writ
ref'd n.r.e.) (acting in representative

capacity in the presentation of claims).

Advising persons as to their rights and
the advisability of making claims for
personal injuries and/or property damages
constitutes the practice of law. See

Quarles, 316 S.W.2d at 800 & 804.

Advising persons as to whether to accept an offered sum of money in settlement of claims for personal injuries and/or property damages entails the practice of law. Cf. Stewart Abstract Co. v. Judicial Commission, 131 S.W.2d 686, 689 (Tex. Civ. App. -- Beaumont 1939, no writ) (all advice to clients connected with the law). Entering into contracts with persons to represent them in their personal injury and/or property damage matters on a contingent fee together with an attempted assignment of a portion of the person's cause of action involves the practice of law. Quarles, 316 S.W.2d at 800-01 & 803. Entering into contracts with third persons which purport to grant the exclusive right to select and retain legal counsel to represent the individual

in any legal proceeding constitutes the practice of law. Cf. id. at 804 (peddling and offering to attorneys legal business of claimants). Advising "clients" of their rights, duties, and privileges under the laws entails the practice of law. Id. at 802.

Brown argues that the Texas Insurance Code authorizes persons such as himself to handle undisputed and uncontested claims and claims arising under life, accident, and health insurance policies, provided the person merely performs clerical duties and does not negotiate with the other parties on the disputed and contested claims. TEX. INS. CODE ANN. art. 21.07-4, sec. 1(b) (5) & (6) (Vernon Supp. 1987).



We conclude that Brown's reliance on this statute is misplaced for the following reasons. First, Brown has not been enjoined from performing clerical duties and there is no contention that purely clerical duties, such as recording a client's responses to questions on a form, is the unauthorized practice of law. Second, we disagree with Brown that the evidence shows that he only handled undisputed and uncontested claims. Brown apparently believes that if the issue of liability is uncontested, that the claim is undisputed and uncontested. A claim or cause of action for personal injury and/or property damage also involves the issue of damages, and as long as the damage issue is unresolved, the claim is a disputed and contested claim. There is



ample proof in this record that Brown negotiated the amount of damages to be paid on behalf of parties other than himself. This activity required the use of legal skill and knowledge and, thus, constituted the practice of law. Cortez, 692 S.W.2d at 50. Consequently, we hold that Brown's course of conduct does not fall within the activities authorized under article 21.07-4, section (b) (5) and (6) of the Texas Insurance Code. Brown's first six points of error are overruled.

Brown contends in his seventh point of error that the trial court erred in its findings, declarations, and issuance of a permanent injunction in that to do so constitutes a denial of equal protection of the laws pursuant to the



Fourteenth Amendment of the United States Constitution. Brown argues that he does no more, if not less, than claim adjusters and managers of insurance companies. Brown contends that to allow them to perform their acts but to deny him these same opportunities amounts to a denial of his right to equal protection of the laws. He emphasizes that the controlling element is the act and not the person who does the act; consequently, if claim adjusters may do these acts, he may do these acts. For authority, Brown relies upon Liberty Mutual Insurance Co. v. Jones, 344 Mo. 932, 130 S.W.2d 945 (1939) (in banc).



The Supreme Court of Missouri in Liberty Mutual stated that the laws of that state provide for claim adjusters, that the adjusters have to be licensed by the state, that the adjusters are subject to disciplinary legislation, and that adjusters are to perform their services under the advice and supervision of counsel. Liberty Mutual Insurance Co. v. Jones, 130 S.W.2d at 955, 961-62. Brown has not pointed to any legislation authorizing his conduct, he is not licensed by the State, he is not subject to disciplinary action, and he acts independent of the advice and supervision of counsel. This authority does not aid Brown's position.

Furthermore, we are not persuaded that Brown's acts and services are the



same as adjusters' acts and services.

"Adjuster" means any person who ... investigates or adjusts losses on behalf of ... any person who supervises the handling of claims." TEX. INS. CODE ANN. art. 21.07-4 1(a) (Vernon Supp. 1987). Because Brown handles claims himself on behalf of persons asserting claims and because he does not investigate or adjust losses on behalf of someone who is handling claims, Brown does not meet the definition of an adjuster and is not, therefore, performing the same acts or services as an adjuster. Brown's seventh point of error is overruled.



Because all of the bases upon which Brown attacks the trial court's judgment have failed, we affirm the issuance of the permanent injunction.

The judgment of the trial court is affirmed.

ANNETTE STEWART
JUSTICE

PUBLISH
TEX. R. APP. P. 90
87-00223. F



NO. 86-8566-H

UNAUTHORIZED PRACTICE	)	IN THE DISTRICT
OF LAW COMMITTEE,	)	COURT
STATE BAR OF TEXAS,)	
)	
VS.	)	DALLAS COUNTY,
	)	TEXAS
RON BROWN and RON)	
BROWN & ASSOCIATES,)	
	)	160TH JUDICIAL
Defendants.	)	DISTRICT

FINAL JUDGMENT

BE IT REMEMBERED that on the 14th day of November, 1986, came on to be heard the above numbered and entitled cause and came the Plaintiff, by and through its attorney of record, and came

APP. D-1

the Defendant pro se and announced to the Court that they had reached an agreement and the parties agreed and stipulated in open Court that this cause would be decided on its merits by the Court and that the evidence heard by the Court on the trial on temporary injunction commencing on the 25th day of July, 1986, and all papers on file in this cause is all of the evidence in the above numbered and entitled cause and such evidence would be the same evidence offered at a trial on the merits and it further being agreed and stipulated that should the Plaintiff be entitled to a sum as an attorneys fee the sum of \$5,000. would be a reasonable fee, the Court proceeded to review the evidence at the temporary injunction hearing as well as Plaintiff's

interrogatories to Defendant and responses thereto and Plaintiff's request for production of documents to Defendant and the responses thereto and finds that the Plaintiff is entitled to declaratory relief and a declaration that the acts or practices of Ron Brown of which Plaintiff complains constitutes the practice of law and it being undisputed that Ron Brown is not now nor has he ever been an attorney duly licensed to practice law in the State of Texas, the Plaintiff has demonstrated its entitlement to injunctive relief. Further, pursuant to the TEX. CIV. REM. Code sec. 37.010, the Court finds Plaintiff is entitled to the stipulated sum as a reasonable attorneys fee and that judgment should be entered accordingly. It is therefore,



ORDERED, ADJUDGED AND DECREED that
Unauthorized Practice of Law Committee,
State Bar of Texas, Plaintiff herein, is
entitled to judgment of and from
Defendant Ron Brown and Ron Brown &
Associates for a declaratory judgment and
this Court does hereby declare that:

- a. Contracting with persons to
represent them with regard
to their personal cause of
actions for property damage
and/or personal injury;
- b. Advising persons as to
their rights and the
advisability of making
claims for personal injuries
and/or property damages;



- c. Advising persons as to whether or not to accept an offered sum of money in settlement of claims for personal injuries and/or property damage;
- d. In entering into contracts with individuals to represent them in their personal injury and/or property damage matters on a contingent fee coupled with an attempted assignment of a portion of such person's cause of action to the Defendants;
- e. In entering into contracts with third persons which purport to grant to Defendant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding;
- f. In advising "clients" their rights, duties and privileges under the law;



constitute acts or practices which constitute the practice of law. Further, the Court finds that the Defendant Ron Brown has engaged in these acts and practices and that Plaintiff has demonstrated their right to permanent injunctive relief. It is therefore,

ORDERED, ADJUDGED AND DECREED that Ron Brown and Ron Brown & Associates are hereby permanently and perpetually enjoined from:

- a. Contracting with persons to represent them with regard to their personal cause of action for property damage and/or personal injury;
- b. Advising persons as to their rights and the advisability of making claims for personal injuries and/or property damages;



- c. Advising persons as to whether or not to accept an offered sum of money in settlement of claims for personal injuries and/or property damage;
- d. In entering into contracts with individuals to represent them in their personal injury and/or property damage matters on a contingent fee coupled with an attempted assignment of a portion of such person's cause of action to the Defendants;
- e. In entering into contracts with third persons which purport to grant to Defendant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding;
- f. In advising "clients" their rights, duties and privileges under the law.



It is further,

ORDERED, ADJUDGED AND DECREED that Plaintiff herein for use and benefit of their attorney of record, Bertran T. Bader III, have judgment of and from Ron brown for the sum of \$5,000. as a reasonable attorneys fee. It is further,

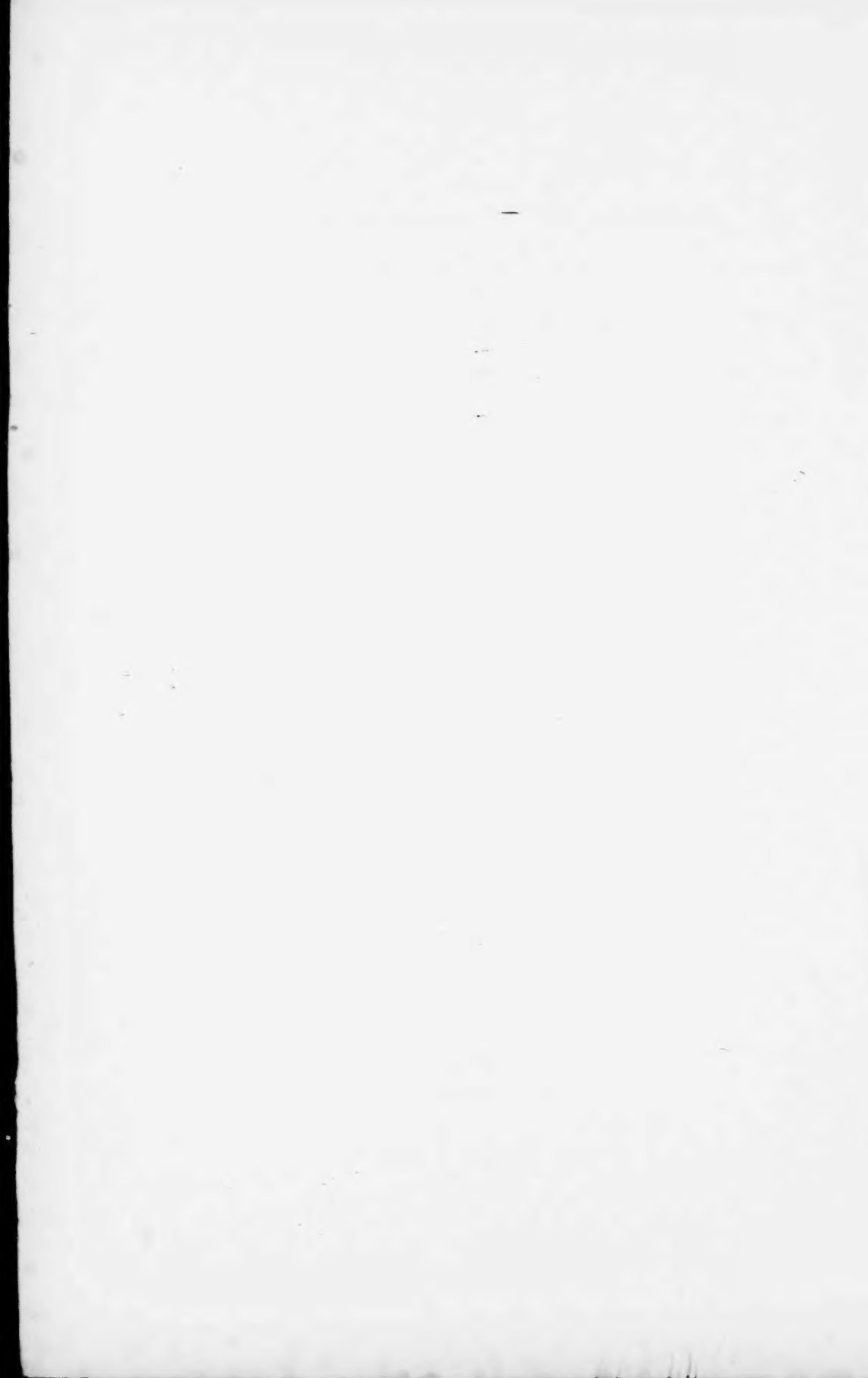
ORDERED, ADJUDGED AND DECREED that all relief not granted herein is specifically denied.

All costs of Court are hereby taxed against Ron Brown and Ron Brown & Associates, for all of which let execution issue if not timely paid.

SIGNED the 26th day of November,
1986.

LEONARD E. HOFFMAN, JR.
JUDGE

APP. D-8



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RON BROWN, ET AL.,)	
)	
Plaintiffs,)	
)	
VS.	)	CIVIL ACTION NO.
)	
VIAL, HAMILTON, KOCH	)	CA 3-87-2654-G
& KNOX, ET AL.,)	
)	
Defendants.)	

ORDER

All discovery shall be completed by
July 31, 1989. Trial is set for
September 5, 1989. 1

SO ORDERED.

April 15, 198.

A. JOE FISH
U.S. District Judge

APP. E-1



1 Should the parties wish an earlier trial setting, they might consider consenting to trial before a United States Magistrate. By agreeing to proceed before a Magistrate, an earlier trial may be obtained. Additionally, the Magistrate is generally able to give settings that are not only earlier but also for an exact date, if that is important to the parties and witnesses -- hereby making it unnecessary for the parties and witnesses to remain ready for trial during the entire period of the court's monthly docket, waiting for this case to be reached (after criminal trials and older civil cases).

The required consent form, requiring the signatures of both parties if such a trial is agreed to, is attached to this order for the parties' consideration and possible implementation.